THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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WRIT PETITION No.24326 of 2005

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DATED: 28-01-2006

Between:

M.Vijayakumar . . .Petitioner

And

The Chief Executive Officer,

AP Khadi and Village Industries Board,

Hyderabad, and another . . .Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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O R D E R:

The petitioner is working as Senior Inspector in the Andhra Pradesh Khadi and Village Industries Board, Guntur. His grievance is that he is not promoted as Assistant Development Officer, against a vacancy reserved in favour of Scheduled Caste.

The petitioner states that even before the Parliament amended Article 16 of the Constitution of India providing for reservation in promotions also, the first respondent Board provided such reservations from the year 1998 onwards. It is stated that the roster point numbers
2 and 7, in the cadre of Assistant Development Officers, were filled up by the candidates belonging to the Scheduled Tribe, by following such reservation. The grievance of the petitioner is that respondents 1 and 2 are not filling up the 16th vacancy, which is earmarked for Scheduled Caste, even though he is eligible in all respects.

In the counter-affidavit filed on behalf of the first respondent-Board, it is stated that the promotions that took place up to 19-01-2004, were effected up to the 14th point in the roster, and the necessity to consider the case of the petitioner did not arise. It is, however, admitted that two more candidates, by names Sri S.Basha Moinuddin and Sri Ch.Rajasekharam, were selected by the Departmental Promotion Committee and appointed as Assistant Development Officers through orders, dated 14-07-2004. The counter affidavit is silent as to why the case of the petitioner was not considered. The third respondent, who was initially shown against roster point No.16, is now said to have been shown against a vacancy earmarked for direct recruitment.

Sri M.Ratna Reddy, learned counsel for the petitioner submits that respondents 1 and 2 are not justified in denying promotion to the petitioner even after the amendment to the Constitution and consequential orders issued by the Government, particularly, when the respondent-Board has implemented the Rule of Reservation for promotion, even before such amendment. He contends that respondents 1 and 2 have filled the 17th roster point, without filling up the 16th roster point, with the petitioner.

Sri V.T.M.Prasad, learned Standing Counsel for the respondents, submits that the respondents did not violate the Rule of Reservation and the case of the petitioner would be considered, as and when it becomes due. He states that the apprehension of the petitioner that the third respondent was accommodated against the 16th vacancy, is misplaced.

It is not in dispute that the Rule of Reservation, for promotions, is in force in the first respondent Board, with effect from 1998. In view of the amendment to the Constitution and the further orders issued by the Government, such reservation became much more fortified. From a perusal of the counter-affidavit, it is evident that up to 19-01-2004, the vacancies, in the post of Assistant Development Officer, were filled up to the 14th roster point. There would not have been any cause of action for the petitioner, had respondents 1 and 2 stopped at the 14th roster point. In such an event, the petitioner was expected to await his chance. It is, however, clear from the averments in the counter-affidavit that two more candidates, by names Sri S.Basha Moinuddin and Sri Ch.Rajasekharam, were promoted as Assistant Development Officers. These candidates have, naturally, to be accommodated against roster point Nos.15 and 17. The 16th roster point being reserved for scheduled caste, respondents 1 and 2 could have proceeded to fill up the 17th roster point, only after filling up the 16th roster point, with the eligible reserved candidate. In that view of the matter, the grievance of the petitioner cannot be said to be without basis.

For the foregoing reasons, the writ petition is allowed, and it is directed that the respondents shall consider the case of the petitioner against the 16th roster point, duly verifying his place in the seniority and other criterion of eligibility.

If the petitioner stands for selection, he shall be promoted with effect from the date on which, the incumbent against the 17th roster point has been promoted. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

28th JANUARY, 2006.

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